
(2024) 11 NCDRC CK 0076

National Consumer Disputes Redressal Commission

Case No: Revision Petition No.1029 Of 2017

Varun Beverages Ltd

APPELLANT

Vs

Arijit Sadhukhan & Anr

RESPONDENT

Date of Decision: Nov. 22, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 21, 21(b)
- Food Safety And Standards Act, 2006 - Section 3(1)(ZX)

Hon'ble Judges: Subhash Chandra, Presiding Member; Avm J. Rajendra, Avsm Vsm (Retd.), Member

Bench: Division Bench

Advocate: Praveen Mahajan, Vrinda, Kunal Nema

Final Decision: Dismissed

Judgement

Subhash Chandra, Presiding Member

1. This review petition under Section 21 (B) of the Consumer Protection Act, 1986 (in short, the "Act") is directed against the order dated 10.01.2017 of the State Consumer Disputes Redressal Commission, West Bengal, Kolkata (in short, the 'State Commission') in Appeal No. 1365 of 2014 dismissing the appeal against order dated 05.11.2014 of the District Consumer Disputes Redressal Forum, South 24 Parganas, Kolkata (in short, the 'District Forum') allowing the complaint.

2. We have heard the learned counsel for the parties and perused the records. Respondent No. 2 did not appear and was placed ex parte.

3. The relevant facts of the case, in brief, are that appellant is a manufacturer of 'Pepsi' branded products (cold drinks) and a "7 Up" cold drink was sold by respondent no.2 to

respondent no. 1 on 30.07.2012. On consuming the same, respondent no.1 experienced stomach pain at night and therefore he purchased two more bottles from respondent no. 2 and found sediments resembling algae or moss floating in the said bottles. Despite representation to the petitioner, the respondent alleges there was no response. He then approached the District Forum praying for compensation of Rs 9,00,000/- and Rs 50,000/- as litigation expense. On contest, the complaint was allowed by the District Forum directing payment of Rs 1,00,000/- as compensation and Rs 5,00,000/- as penalty, of which 75% was to be deposited with the Consumer Welfare Fund within one month, failing which, with interest @ 10% till realization. This order was appealed against before the State Commission and was dismissed after considering the submissions of both parties. This order has been challenged by way of this review petition.

4. Both the District Forum and the State Commission have considered the issues raised before them on the basis of the report dated 05.03.2013 of the Public Analyst (Food & Water), Government of West Bengal which concluded that the sample contained the presence of 'suspended particles' and therefore concluded that the sample was 'substandard under clause (ZX) of sub-section (1) of section 3 of FSS Act, 2006'. The petitioner's case is that the said report did not specify which sample bottle of the three bottles was found to be 'substandard'. The State Commission in its order has clearly held that the sample sent for testing was found to be 'substandard' and that it was not material which specific bottle was found to be so.

5. The order of the State Commission and the District Forum are detailed and well-reasoned in setting out the reasons for the findings that establish deficiency in service on part of the petitioner. From the records it is apparent that the petitioner has challenged the impugned order on the very same grounds which were raised before the District Forum as well as the State Commission in appeal. The concurrent findings on facts of these two fora are based on evidences led by the parties and documents on record. The present revision petition is therefore an attempt by the petitioner to urge this Commission to re-assess and re-appreciate the evidence which cannot be done in revisional jurisdiction. Learned counsel for the petitioner has failed to show that the findings in the impugned order are perverse.

6. This Commission, in exercise of its revisional jurisdiction, is not required to re-assess and re-appreciate the evidence on record when the findings of the lower fora are concurrent on facts. It can interfere with the concurrent findings of the fora below only on the grounds that the findings are either perverse or that the fora below have acted without jurisdiction. Findings can be concluded to be perverse only when they are based on either evidence that have not been produced or based on conjecture or surmises i.e. evidence which are either not part of the record or when material evidence on record is not considered. The power of this Commission to review under section 21 of the Act is therefore, limited to cases where some prima facie error appears in the impugned order. Different interpretation of same sets of facts has been held to be not permissible by the Hon'ble Supreme Court.

7. The Hon'ble Supreme Court in *Rubi (Chandra) Dutta* (2011) 11 SCC 269 dated 18.03.2011 has held that:

"23. Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora."

8. Reiterating this principle, the Hon'ble Supreme Court in *Lourdes Society Snehanjali Girls Hostel and Ors vs H & R Johnson (India) Ltd., and Ors* (2016) 8 SCC 286 dated 02.08.2016 held:

"17. The National Commission has to exercise the jurisdiction vested in it only if the State Commission or the District Forum has either failed to exercise their jurisdiction or exercised when the same was not vested in them or exceeded their jurisdiction by acting illegally or with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which is based upon valid and cogent reasons."

9. The Hon'ble Supreme Court in its judgment dated 05.04.2019 in the case of *T Ramalingeswara Rao (Dead) Through LRs & Ors Vs. N Madhava Rao and Ors*, Civil Appeal No. 3408 of 2019 dated 05.04.2019 held as under:

"12. When the two Courts below have recorded concurrent findings of fact against the Plaintiffs, which are based on appreciation of facts and evidence, in our view, such findings being concurrent in nature are binding on the High court. It is only when such findings are found to be against any provision of law or against the pleading or evidence or are found to be perverse, a case for interference may call for by the High Court in its second appellate jurisdiction."

10. The fora below have pronounced orders which are detailed and have dealt with all the contentions of the petitioner which have been raised before us in this revision petition. It is also seen that the orders of these fora are based on evidence on record. In view of the settled proposition of law that where two interpretations of evidence are possible, concurrent findings based on evidence have to be accepted and such findings cannot be substituted in

revisional jurisdiction, this petition is liable to fail.

11. We, therefore, find no illegality or infirmity or perversity in the impugned order warranting any interference of this Commission. The present revision petition is, therefore, found to be without merits and is accordingly dismissed.

12. In the circumstances of the case, there shall be no order as to costs. Pending IAs, if any, stand disposed of with this order.